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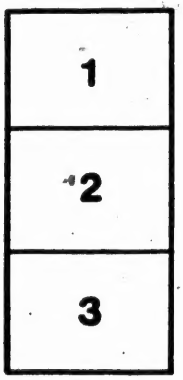

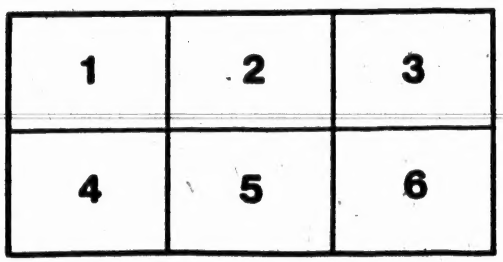

26 Apr. 1830

IN APPEAL.

APRIL TERM, 1830.

WHITE,

APPELLANT,

and

CAMERON,

RESPONDENT,

Appellant's Case.

Mr. AYLWIN of Counsel
For Appellant.

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PROVINCE OF LOWER CANADA. } **COURT OF APPEALS.**

THOMAS WHITE,

and APPELLANT,

EDWARD ANDREW CAMERON,

RESPONDENT.

Case for the Appellant.

THIS appeal has been instituted from a judgment of the court of King's Bench for the District of Quebec of February term last, by which a sale of certain immoveable property is ordered at the *folle enchère* of the appellant, and his application for leave to fyle a petition in answer to the proceedings had in the Court below at the instance of the Respondent, is discharged with costs.

The facts upon which this case stands are these :—Previously to the purchase by the appellant of the real property, a re-sale whereof is ordered at the appellant's *folle enchère*, it was agreed upon between him and the respondent, that if the appellant purchased the said property, the respondent would allow the amount of his certain mortgage upon the property, secured by *privilege de bailleur de fonds*, to remain in his hands at interest, upon the faith of which promise the appellant purchased the property in question.

That the appellant has satisfied all the parties collocated in the Prothonotary's report of *distribution*, excepting the respondent, and has moreover paid into the hands of the Sheriff a sum of pounds, adequate to cover all law expences—notwithstanding which the respondent has refused to allow the amount of his collocation to remain in the appellant's hands, and has obtained an order for a re-sale of the property.

In answer to the respondent's application in the court below, which was made in the shape of a rule *nisi*, the appellant filed an affidavit, ~~notwithstanding~~ all the above facts, and a petition reciting them accompanied also by an affidavit." The prayer of the petition is, that the court below do order an *enquête* upon the facts alleged, and thereupon do render such judgment as to justice shall appertain. substantially

The reasonableness of this application appears so manifest that the appellant conceives it unnecessary at all to enlarge upon the subject. Notwithstanding this, however, the court below, by its judgment refused to order an *enquête*, and made the rule for a re-sale absolute with costs ; and it is for the reversal of that judgment that the present appeal has been instituted.

Quebec, 24th April, 1830.

T. C. AYLWIN,

For Appellant.